

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL MISC.APPLICATION No. 13569 of 2006
With
CRIMINAL MISC.APPLICATION No. 5814 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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ADAM BACH CHANKI, (AS PER FIR ADAM BHUDA CHAKI -
Applicant(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR HASHIM QURESHI for Applicant(s) : 1,
 Mr. MR Mengdey, Addl. PUBLIC PROSECUTOR for Respondent(s) : 1,
 DS AFF.NOT FILED (R) for Respondent(s) : 2 - 3.
 MR ASHISH M DAGLI for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 03/07/2007
ORAL JUDGMENT

Rule. Shri MR Mengdey, learned APP
 waives service of Rule on behalf of respondent
 State. As both these applications arise out of

the same FIR/Complaint they are being disposed of by this common order.

2. By way of these applications filed under Section 482 of the Code of Criminal Procedure, 1973, the respective applicants, original-accused, have prayed to quash and set aside the Complaint/FIR filed by respondent No.4, being C.R. No. II-3277 of 2006 dated 25th November 2006 registered with Mundra police station.

3. A criminal complaint, being C.R. No. II-3277 of 2006 is filed by one Muljibhai Dahyabhai Maheshwari [Dalit] aged 85 against the respective petitioners - original-accused for the offences punishable under Section 3(1)(v) of The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [hereinafter referred to as 'the Act'] alleging inter alia that land bearing Survey No. 83 is in his possession; that the accused have jointly tried to dispossess him and by creating a bogus power of attorney have sold

the land to one Adam Chaki, i.e., petitioner of Criminal Misc. Application No. 13569 of 2006 and thus have tried to snatch the land of the petitioner and are trying to interfere with possession of the petitioner; and therefore it is alleged that the petitioners original-accused have committed the offences under Section 3(1)(v) of the Act. It is required to be noted that during the course of the investigation and before even further investigation was carried out, one of the accused, i.e., Adam Bach Chanki has preferred Criminal Misc. Application No. 13569/2006 and the said application came to be admitted and the learned Single Judge of this Court granted interim relief directing the respondents not to arrest the applicant in connection with the aforesaid complaint. Thus, even at the admission stage no stay of further investigation has been granted by this Court. Both the respective applicants, original-accused have preferred the present applications under Section 482 of the

Code of Criminal Procedure to quash and set aside the aforesaid complaint.

4. Shri Qureshi, learned advocate appearing on behalf of the respective petitioners has vehemently submitted that no case is made out against the petitioners for the offences under Section 3(1)(v) of the Act. It is submitted that in fact the original-accused No.1 has written to the Dy.S.P., and PSI, Mundra, for alleged harassment meted out to him as far back as on 21.4.2006. It is submitted that there is a dispute with regard to tenancy and therefore the present complaint is filed on false and frivolous grounds and as the dispute seems to be a property dispute it should be dealt with by competent revenue authority or by civil court and it does not attract any criminal law. It is further submitted that a bare reading of Section 3(1)(v) of the Act suggests that a person belonging to SC or ST community should not be dispossessed from his land or premises but if the title of the

premises is disputed he can approach the authority for clarification of the title or to establish the title he can resort to lawful remedy and therefore the present complaint does not make out any offence in the eye of law. It is therefore requested to allow both the applications and quash the complaint.

5. The applications are opposed by the learned Additional Public Prosecutor as well as the learned counsel appearing on behalf of the original-complainant. It is submitted that at present what is required to be considered is whether the allegations and averments made in the complaint *prima facie* discloses cognizable offences which require investigation or not and the Court is not at present required to look into the allegations or averments on merits in detail. It is submitted that as the petitioners, original-accused have tried to dispossess the complainant and sell and/or sold the property of the original-complainant who is a Dalit a clear

case is made for offences punishable under Section 3(1)(v) of the Act it is requested to dismiss the present applications.

6. Heard the learned advocates appearing on behalf of the respective parties. It is not in dispute that the original-complainant is a Dalit as so stated in the complaint and the allegations made in the complaint are that the petitioners, original-accused and others are trying to dispossess the complainant and/or interfere with his possession and by creating false and bogus power of attorney one of the accused has sold the land to one Adam Chanki. Thus it is alleged in the complaint that all the accused are trying to interfere with the possession and/or trying to interfere with the ownership of the complainant. That the investigation by the concerned Investigating Officer is in progress. At present, this Court is not required to go in detail the merits or demerits of the case and/or the allegations levelled in the complaint. What

is required to be considered is whether the allegations/averments in the complaint disclose prima facie a cognizable offence which requires further investigation or not. In my view, looking to the complex question of facts involved in the matter and the police is also inquiring into the offence punishable under Section 3(1)(v) of the Act, it will not be just and proper to stall the investigation at this stage. Ultimately after the investigation is over, it will be for the learned Magistrate/Court to take an appropriate decision. Looking to the facts of the case, it is too premature a stage to quash the police investigation restraining the police from investigating regarding the offence. This is not a case in which the investigation is required to be stalled at the threshold. Considering the judgment of the Hon'ble Supreme Court in the case of **State of M.P. Vs. Awadh Kishore Gupta**, reported in 2004(1) SCC Page 691, normally the Court would not prevent the police from carrying out investigation subject to

certain limitations. Under the circumstances, when the investigation is in progress and more particularly the object for which the The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is enacted, this is not a fit case where this Court should quash the complaint at the threshold and stall the investigation by the police.

7. For the reasons stated above, both these applications are required to be dismissed and are accordingly dismissed. Rule is discharged. Ad-interim relief stands vacated forthwith.

[M.R. Shah, J.]

rmr.